

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (RCC) ECF Case
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This document relates to:

Thomas E. Burnett, Sr., et al. v. Al Baraka Investment & Development Corp., et al., Case Nos. 03-CV-5738 and 03-CV-9849 (S.D.N.Y.)
Kathleen Ashton, et al. v. Al Qaeda Islamic Army, et al., Case No. 1:02-6977 (S.D.N.Y.)
Federal Insurance Co., et al. v. Al Qaida, et al., Case No. 03-CV-6978 (S.D.N.Y.)
Cantor Fitzgerald & Co., et al. v. Akida Bank Private, Ltd., et al., Case No. 04-CV-7065 (S.D.N.Y.)
Continental Casualty Co., et al. v. Al Qaeda Islamic Army, et al., Case No. 04-CV-05970-UA (S.D.N.Y.)
Estate of John P. O'Neill, Sr., on behalf of John P. O'Neill, Sr., deceased, and on behalf of decedent's heirs-at-law, et al. v. Al Baraka Investment and Development Corp., et al., Case No. 04-CV-1923 (S.D.N.Y.)
Euro Brokers, Inc., et al. v. Al Baraka Investment and Development Corp., et al., Case No. 04-CV-07279-UA (S.D.N.Y.)
New York Marine and General Insurance Co. v. Al Qaida, et al., Case No. 04-CV-6105 (S.D.N.Y.)
World Trade Center Properties, LLC, et al. v. Al Baraka Investment and Development Corp., et al., Case No. 04-CV-7280 (S.D.N.Y.)

**CONSOLIDATED REPLY MEMORANDUM IN SUPPORT OF MOTION TO
SUPPLEMENT MOTIONS TO DISMISS OF DEFENDANT KHALID BIN MAHFOUZ**

Plaintiffs do not deny that this Court has discretion to consider materials outside the Complaints when deciding a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2).¹ Nor do they dispute that it is well within this Court's discretion to permit Mr. Bin Mahfouz to supplement his motions to dismiss with the October 4, 2006 Witness Statement of

¹ See *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 298 (S.D.N.Y. 1996) *aff'd*, 126 F.3d 25 (2d Cir. 1997) ("matters outside the pleadings . . . may also be considered in resolving a motion to dismiss for lack of personal jurisdiction pursuant to Fed.R.Civ.P. 12(b)(2) without converting it into one for summary judgment.").

Jean Charles Brisard (“Witness Statement”), even after briefing has been completed.²

Though Plaintiffs claim that their allegations against Mr. Bin Mahfouz do not derive from Mr. Brisard’s work, the basic claims made against Mr. Bin Mahfouz in this litigation were first brought to prominence by Mr. Brisard, who publicized those allegations in his book *Forbidden Truth - U.S.-Taliban Secret Oil Diplomacy And The Failed Hunt For Bin Laden*. Then, after Mr. Brisard was retained by the *Burnett* Plaintiffs, those same allegations appeared in the *Burnett* Complaint and, later, the nearly identical *Ashton* Complaint.³ These same core claims against Mr. Bin Mahfouz are repeated in each of the other Complaints in the above-captioned cases. These are the very allegations that Mr. Brisard now states – under penalty of perjury – are baseless.

While Plaintiffs now seek to distance themselves from Mr. Brisard, each and every Plaintiff in the above-captioned cases has submitted materials from Mr. Brisard at some point in this litigation. *See* Memorandum In Support Of Motion To Supplement Motions To Dismiss of Defendant Khalid Bin Mahfouz (“Mem.”) at 4 n.2 (citing submissions of materials from Mr. Brisard by each above-captioned Plaintiff). While Mr. Brisard’s Golden Chain Affidavit was only submitted in opposition to Mr. Bin Mahfouz’s motion to dismiss by the *Burnett* Plaintiffs, it could influence the Court’s decision in all these cases, which will presumably be decided on a consolidated basis.⁴ Accordingly, it is appropriate for the Court to accept and consider Mr. Brisard Witness Statement not just in *Burnett* but in all of the consolidated cases.

² *See S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1314 (9th Cir. 1982) (acceptance or rejection of unscheduled memoranda and other supplemental material within the sound discretion of the court).

³ Compare *Ashton* 3AC ¶¶ 567-71 (discussing BCCI and the NCB “audit report”) with *Burnett* 3AC ¶¶ 92-95 (same) and *Ashton* 3AC ¶¶ 460-463 (discussing Muwafaq and Yassin Qadi) with *Burnett* 3AC ¶¶ 331-34 (same)

⁴ The *Burnett*, *Euro Brokers*, and *World Trade Center* Plaintiffs belatedly filed an opposition to Mr. Bin Mahfouz’s motion on October 20, 2006 – which need not be considered because it was filed past the filing date without leave of Court – in which they claim that this Court denied their request to supplement the record with the

As explained in our initial Memorandum in Support of this motion, Mr. Brisard's Witness Statement provides information that is useful in construing the adequacy of the claims made against Mr. Bin Mahfouz by all of the plaintiffs. *See* Mem. at 3-8. Accordingly, this Court should grant this motion to permit Mr. Bin Mahfouz to supplement his pending motions to dismiss in all of the consolidated cases with the new Witness Statement of Jean-Charles Brisard.

Dated: October 20, 2006

Respectfully submitted,

/s/ Geoffrey S. Stewart

Geoffrey S. Stewart (GS-5413)
JONES DAY
222 East 41st Street
New York, New York 10017-6702
Tel: (212) 326-3939
Fax: (212) 755-7306

Michael Nussbaum (MN-9981)
BONNER, KIERNAN, TREBACH
& CROCIATA
1233 20th Street, N.W., 8th Floor
Washington, D.C. 20036
Tel.: (202) 712-7000
Fax.: (202) 712-7100

Stephen J. Brogan
Timothy J. Finn
Jonathan C. Rose
James E. Gauch
Michael P. Gurdak
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 879-3939
Fax: (202) 626-1700

Attorneys for Defendant Khalid Bin Mahfouz

(continued...)

Brisard's Golden Chain Affidavit. *See* Plaintiffs' Memorandum of Law in Opposition to Motion to Supplement Motions to Dismiss of Defendant Khalid Bin Mahfouz (MDL Docket # 1913) at 4 & n.3. In fact, the Court's order states only that the Court "did not consider the supplemental material that the *Burnett* and *Federal* Plaintiffs submitted in opposition to Mr. Jalaidan's motions to dismiss." *In re Terrorist Attacks on September 11, 2001*, 392 F. Supp. 2d 539, 562 n.10 (S.D.N.Y. 2005).

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2005 I caused an electronic copy of the Consolidated Reply Memorandum In Support Of Motion To Supplement Motions To Dismiss of Defendant Khalid Bin Mahfouz to be served by the Court's Electronic Case Filing System.

Date: October 20, 2006

/s/ Stephen J. Brogan
Stephen J. Brogan